***United States Court of Appeals***

***for the Second Circuit***


# APPELLANT'S BRIEF

Original

Docket No.

To Be Argued By
Jeffrey S. Karp

# 75 - 7515

UNITED STATES COURT OF APPEALS

For the Second Circuit

Docket No. 75-7515

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RAUL GONZALEZ,

Plaintiff-Appellee,

-against-

ALBERT SHANKER, ANNE MERSEREAU, LEONARD LURIE, ADOLPH ROHER, RICHARD LEE PRICE, JEROME GOODMAN, CAROLYN KOZLOWSKY, MARTIN RUBIN, KENNETH CAROSELLA, GARY SOUSA, HARRY LASSER, ROGER BRAVERMAN, LORRAINE SPIVACK, IRVING ANKER, JOSEPH MONSERRAT, STEPHEN AIELLO, JOSEPH G. BARKAN, ROBERT CHRISTEN, AMELIA ASHE, JAMES F. REGAN, ISAIH ROBINSON, THE UNITED FEDERATION OF TEACHERS, SOL LEVINE, GEORGE FESKO and MAX GREEN,

Defendants-Appellants.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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## UFT APPELLANTS' BRIEF

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# UFT APPELLANTS' BRIEF

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## PRELIMINARY STATEMENT

This is an appeal on behalf of defendant-appellants Carosella, Braverman, Spivack, Shanker, Levine, Fesko

Green and United Federation of Teachers (hereinafter UFT defendants), from a memorandum and order entered on August 5, 1975, in the United States District Court for the Southern District of New York (Knapp, D.J.) (138-161)*, which order denied the defendants' motion to dismiss the complaint on the grounds that the plaintiff-appellee had failed to exhaust his available and adequate administrative remedies, that the case was not "ripe" for judicial resolution, and that the complaint failed to state a claim upon which relief can be granted. In addition, the private UFT defendants raised the defense that the complaint failed to make out the requisite showing of "state action" on their part as required by the Federal Civil Rights Act, 42 U.S.C. §1983.

The District Court, in its decision denying the defendants' motion to dismiss the complaint certified, pursuant to 28 U.S.C. §1292(b), that the question whether plaintiff should be required to exhaust remedies is a controlling question of law as to which there may be substantial ground for difference of opinion, the immediate resolution of which may materially advance

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* Unless otherwise indicated, numbers in parenthesis refer to pages in the Joint Appendix.

the ultimate resolution of this litigation (153).

Pursuant to 28 U.S.C. §1292(b), the UFT defendants on August 15, 1975, petitioned this Court for leave to appeal the District Court's order and for a stay of the proceedings below pending the determination of the petition and any subsequent appeal. The governmental defendants had moved for the same relief on August 14, 1975. On September 2, 1975, this Court granted both defendants' petitions, resulting in the instant appeal (162 and 163).

## QUESTIONS PRESENTED

In this action, plaintiff, Raul Gonzalez, the Principal of Junior High School 60M, a school within the jurisdiction of Community School District No. 1, Borough of Manhattan, City of New York, is seeking declaratory relief, injunctive relief and damages against certain governmental defendants, who are the chief administrative officers and elected and/or appointed officials of the New York City Board of Education and Community School District No. 1, as well as against certain non-governmental defendants, primarily the United Federation of Teachers and certain of its officers, employees and members.

The complaint alleges that the plaintiff is being subjected to administrative harassment and interference with the performance of his duties as Principal of Junior High School 60M by the defendants, as a means by which certain of the defendants might build a future record of inferior performance and non-accomplishment of plaintiff as the basis for some future disciplinary action. Plaintiff alleges that defendants are motivated by the fact that plaintiff

is of Puerto Rican ancestry, is committed to a program of bilingual education, and has supported the former District Superintendnet, Luis Fuentes. The following questions are presented:

1. Must the plaintiff exhaust the administrative remedies available to him under the CSA contract and Section 310 of the New York State Education Law prior to entering Federal Court under the Civil Rights Act?

2. Has the plaintiff demonstrated that the private actions of the UFT defendants were so clothed with government authority so as to be considered state action?

3. Did the District Court err in not dismissing this action where the complaint clearly failed to state a claim against the UFT defendants upon which relief can be granted?

FACTS

On or about April 8, 1975, the plaintiff, by summons and complaint, brought this action for declaratory judgment, injunctive relief and damages pursuant to 42 U.S.C. §1981, 1983, 1985(3) and 1986. Plaintiff has charged the "governmental defendants" and the United Federation of Teachers and several of its officers and members (Carosella, Braverman, Spivack, Levine, Shanker, Fesko and Green) with engaging in a conspiracy to deprive him of a number of employment rights purportedly in violation of the United States Constitution and the Federal Civil Rights Act.

Plaintiff was at the time of the commencement of this action and continues to serve as the Principal of Junior High School 60M, a school located in Community School District One, Manhattan. Junior High School 60M is an educational facility under the statutory control of Community School Board No. 1 pursuant to New York State Education Law, Section 2590-e.

Plaintiff has not been the subject of summons, censure, transfer, dismissal, discharge or any disciplinary action at the instance of any of the de-

fendants named herein, nor does the plaintiff allege any such facts in his complaint. Further, plaintiff has not been charged and is not now the subject of charges in any disciplinary proceeding initiated by the defendants, nor does the plaintiff allege any such facts in his complaint.

Instead, plaintiff alleges that he has been "subjected to a deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as principal of J.H.S. 60M by the "governmental defendants" at the instigation of the "UFT defendants". This "harassment, interference and non-cooperation", plaintiff further alleges, is being carried out by the defendants because plaintiff is of Puerto Rican ancestry and is committed to a program of bilingual education and has been identified as a supported of the then Community School District Superintendent, Luis Fuentes (15).

As a principal of a junior high school, plaintiff is a supervisory employee who is covered by the terms of the negotiated collective bargaining agreement entitled, Agreement between the Board of Education of the City of New York and the Council of Supervisors and Administrators of the City of New York, Local 1, School Administrators and Supervisors Organizing Committee, AFL-CIO, October 1, 1972 - October 1, 1975 (hereinafter

referred to as the "CSA contract" and attached to the affidavit of Joseph F. Bruno as Exhibit "A" (44-122).

The terms of the CSA contract contain very specific administrative and/or contractual remedies for the resolution of complaints and/or grievances which allege (1) that improper or unfair material has been placed in a supervisor's files (Article VI, subd. (J) and Article X); (2) that a supervisor was improperly dismissed or summoned for an interview which might lead to a disciplinary action (Article VII, subd. (J) and (3) that a supervisor in the course of his employment is the subject of harassing conduct or intimidation by a person or group of persons (Article XI).

Plaintiff in the "wherefore clause" of his complaint, Count 1, subdivision (1)(c) prays relief from this Court to "expunge from plaintiff's file any improper or deleterious entry based upon the acts complained of herein". Plaintiff's complaint makes no allegation nor has plaintiff, in fact, pursued the administrative remedy found in Article VI, subd. (J) and Article X of the CSA contract, said remedy being specifically created and negotiated to

deal with this precise claim for relief made by the plaintiff.

Plaintiff, at paragraph "30" of the complaint, alleges a "deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as Principal of J.H.S. 60M, carried out through, by and at the instigation of the defendant member officers and employees of the U.F.T. ... of the defendant members of the Community School Board ... of the defendant Acting District Superintendents Mersereau and Lurie ... by defendant Chancellor Anker and defendant members and employees of the Board of Education". (See also paragraphs "31", "32", "35 to "42" of the complaint). Plaintiff, however, in his complaint makes no allegation nor has he, in fact, pursued the administrative remedies available to him as found in Article XI and Article X of the CSA contract, said remedies being specifically created and negotiated to deal with this precise claim for relief made by the plaintiff.

No where in the complaint is it alleged that plaintiff was ever dismissed, suspended or summoned for an interview which could lead to a disciplinary

action against him. The complaint at paragraph "32" alleges that the actions of all defendants are "pursued as a means of building a false record of inferior performance and non-accomplishment for plaintiff as the basis for some future disciplinary action or termination... ." The CSA contract at Article VII subd. (J)(1) and (J)(3) provides an administrative and/or contractual remedy to deal with any summons for an interview which may lead to disciplinary action or any dismissal. Clearly if either summons or dismissal, in fact, occurs the CSA contract provides a swift administrative remedy.

The remedies provided by the CSA contract to deal with plaintiff's claim are sufficiently potent to resolve the issues and provide meaningful relief. Each remedy alluded to would carry with it the force of either an order of the Chancellor, the highest ranking education officer in the New York City school system or of the Board of Education, the controlling educational authority in New York City.

In addition, plaintiff would have an administrative appeal available to him to the New York State Commissioner

of Education from any and all of the alleged acts of misconduct on the part of the defendants pursuant to Section 310 of the New York State Education Law.

In opposition to the aforementioned motions to dismiss plaintiff submitted his own affidavit in which he made the unsubstantiated allegation that the Council of Supervisors and Administrators (CSA) had never supported any action taken by him in the course of the performance of his duties (126-127). Plaintiff did not allege that the administrative remedies created by the "CSA contract" were inadequate or futile. In fact, there is no requirement in the "CSA contract" that plaintiff's claims be initiated or processed by the CSA. Both Article X - Grievance Procedure (105) and Article XI - Special Complaints (112) permit the grievant's proceeding on his own initiative. Moreover, plaintiff did not allege that an appeal to the Commissioner of Education would be either inadequate or futile.

## OPINION BELOW

In denying the defendants' motion to dismiss, the District Court found that the state administrative remedy available to plaintiff pursuant to Section 310 of the Education Law was inadequate (146-147). The Court further found that there was no basis for extending the exhaustion of administrative remedies requirement to the type of contractual remedies involved in this case (147). In finding that the plaintiff was not required to exhaust the contractual remedies, the Court stated:

> "It seems to us that Alexander (Alexander v. Gardner Denver Company, 415 U.S. 36 (1974), also precludes any requirement that purely contractual remedies be exhausted in civil rights actions brought under sections other than Title VII, such as 42 U.S.C. §1981, §1983, §1985 or §1986." (148)

The Court further found that the entire panoply of contractual remedies created by the "CSA contract" was inadequate in this case (149-151).

With respect to the defendants' claim that the complaint failed to allege facts sufficient to constitute a cause of action, the Court found that "the

plaintiff had set forth facts showing intentional and purposeful deprivation of his civil rights, and had alleged with at least some degree of particularity overt acts by the defendants which he claims were reasonably related to the promotion of the claimed conspiracy." Such a showing, the Court concluded, was sufficient to withstand a motion to dismiss pursuant to Rule 12(b)(6) (151-152).

With respect to the UFT defendants' claim that the plaintiff had failed to make the requisite showing of "state action" on their part to bring them within the ambit of 42 U.S.C. §1983, the Court noted that plaintiff's complaint had clearly alleged that the UFT defendants engaged in concerted, interrelated activity with the various governmental defendants (152-153).

Finally, the Court found that the question whether plaintiff should be required to exhaust remedies is a controlling question of law as to which there may be substantial ground for difference of opinion and certified such question to this Court pursuant to 28 U.S.C. §1292(b) (153).

POINT I

PLAINTIFF IS REQUIRED TO EXHAUST HIS AVAILABLE AND ADEQUATE REMEDIES PRIOR TO BRINGING THIS ACTION UNDER 42 U.S.C. §1983.

(1)

It is clearly the law in this Circuit that a plaintiff asserting civil rights claims under 42 U.S.C. §1983 must exhaust adequate State administrative remedies before bringing suit in Federal Court. Eisen v. Eastman, 421 F 2d 560 (2nd Cir., 1969), cert. den. 400 U.S. 841 (1970); James v. Board of Education, 461 F 2d 566 (2nd Cir., 1972), cert. den. 409 U.S. 1042 (1972); Blanton v. State University of New York, 489 F 2d 377 (2nd Cir., 1973). Subsequent to Blanton, supra, the Supreme Court decided Steffel v. Thompson, 415 U.S. 452 (1974), which appeared, at the time, to have overruled Eisen and Blanton. However, this Court in both Plano v. Baker, 504 F 2d 595, 597 (2nd Cir., 1974) and Fuentes v. Roher, 519 F 2d 379 (2nd Cir., 1975) has continued to recognize the exhaustion doctrine as a viable and important requirement in this Circuit.

This Court pointed out in Plano, supra, that the applicable statement from Steffel which appeared to have overturned the exhaustion of state administrative remedies doctrine was dictum, in that the holding of that case involved state judicial remedies. Moreover, this Court interpreted Steffel to be consistent with Eisen and Blanton "'as simply condemning a wooden application of the exhaustion doctrine in cases under the Civil Rights Act.'" 489 F 2d at 383 quoting 421 F 2d at 569. See also Beattie v. Roberts, 436 F 2d 747 (1st Cir., 1971).

Indeed, there are important qualifications to the exhaustion requirement in this Circuit, consistent with this Court's policy of refraining from following a "wooden application of the exhaustion doctrine." One exception is presented where the question of the adequacy of the administrative remedy is for all practical purposes coextensive with the merits of the plaintiff's constitutional claim, Fuentes v. Roher, 519 F 2d 379, 387, (2nd Cir., 1975) also, Gibson v. Berryhill, 411 U.S. 564, 575; Finnerty

v. Cowen, 508 F 2d 979, 982-3, (2nd Cir., 1974). However, that is not the case here. Plaintiff has not challenged the adequacy of the administrative remedies which defendants have pressed. In fact, the complaint is devoid of any reference to the "CSA contract" or the appeal procedures created by Section 310 of the Education Law. The plaintiff is rather challenging certain administrative, pedagogical and other actions on the part of the defendants as they allegedly effect his employment. The "coextensive" exception recognized by this Court in Fuentes, supra, therefore, has no application to the case at bar.

(2)

The other important qualification to the exhaustion doctrine is found where the administrative remedies are themselves futile or inadequate; Plano, supra, at 597. This is apparently one of the gounds for the conclusion reached by the Court below that the plaintiff was not required to exhaust his administrative remedies (149-151).*

* The other ground would appear to be that the plaintiff need not exhaust contractually created administrative remedies (148). This finding will be discussed later in Point I.

Defendants submit that the Court below erred, as a matter of law, when it found that the panoply of administrative remedies created by the "CSA contract" and §310 of the Education Law were inadequate. It must be emphasized that when the Court is called upon to determine the adequacy of the administrative remedy its object is to measure the nature of the harm alleged to have been suffered by the party, against the adequacy of the procedures available to the affected party for the possible resolution of his complaints.

The allegations of the complaint specify three (3) central claims upon which plaintiff seeks declaratory and injunctive relief and damages:

Claim (1)- Plaintiff is alleging that defendants are pursuing "a deliberate and continuing program of harassment, interference and non-cooperation in the performance of his duties as principal of J.H.S. 60M" (paragraphs "30", "31", "32", "35" to "42" of the complaint).

Claim (2)- Plaintiff alleges that defendants are harassing or interfering with him "as a means of building a false record of inferior performance and non-accomplishment for plaintiff as a basis for some future disciplinary action or termination..." (paragraph "32" of the complaint).

Claim (3)- Plaintiff alleges that defendants are placing improper or deliterious material based on the acts complained of in the complaint, in plaintiff's personnel file ("wherefore clause", Count 1, subd. (1)(c)).

PLAINTIFF'S ADMINISTRATIVE REMEDIES

A meaningful administrative remedy exists for each and every claim specified in the complaint and plaintiff has failed in all respects to pursue these remedies.

Claim (1) - "deliberate and continuing harassment..."

Article XI of the CSA contract entitled "Special Complaints" provides a direct and adequate remedy to deal precisely with the allegations made by plaintiff in Claim (1). Subdivision A of Article XI defines a special complaint as "a complaint by a supervisor that a person or persons or groups are engaged in a course of harassing conduct, or in acts or intimidation, which are being directed against him in the course of his employment and, that.... the District Superintendent of the district in which he is employed . . . has not afforded the supervisor adequate relief against such course of conduct or acts of intimidation."

Said special complaint may be filed with the Chancellor of the City Board and shall receive expedited handling (Article XI, subd. B). Within 24 hours after filing the special complaint with the Chancellor, a "joint" investigating committee shall investigate the complaint and attempt to resolve it. (Article XI, subd. C). If unsuccessful, the complainant may request a hearing before the Chancellor which shall be held within 48 hours of request. The "joint" investigating committee and the complainant shall have an opportunity to be heard (Article XI, subd. D). Within 72 hours after the close of this hearing, the Chancellor shall render a decision and notify all parties. (Article XI, Subd. E). If the complaint is not resolved by the Chancellor's decision, the complainant shall have the right within ten (10) school days after the issuance of the Chancellor's decision to submit the complaint for hearing and fact finding before a fact-finder. This fact-finder shall render findings of fact not later than 72 hours from the date of the closing of the hearing. The findings shall be in writing. The fact-finder if he finds the complaint to be substantiated shall recommend a remedy (Article XI, subd. F) and within

10 days after receipt of his report the City Board shall make a determination (Article XI, subd. G).

The plaintiff, as an employee covered by this CSA contract, has a remedy specifically bargained for by his representatives to resolve in the first instance the precise issue of harassment alleged in the major portion of the complaint. Yet, plaintiff has not at all availed himself of this remedy nor has he alleged pursuit of his rights under the contract. Article XI of the CSA contract provides the potential for complete resolution of plaintiff's claim of "deliberate and continuing harassment" by defendants.

Claim (2) - "future disciplinary action or termination:"

Plaintiff does not allege that any present disciplinary charges or action is pending against him, but instead alludes to some future potential for same based upon his contention that defendants are presently building a record against him.

As to the alleged present harassment by the defendants, this claim is subject to the "special complaint" procedure discussed at length above.

As to any future dismissal, discharge, summons

or review, Article VII, subd. (J) of the CSA contract provides an effective remedy. If a supervisor is summoned to the office of his superior, he shall be given a 48 hour notice and statement of the reasons for the summons. If the summons may lead to disciplinary action, an interview procedure is established with all parties permitted representation (Article VII, subd. (J)(1)).

If dismissal of a supervisor was contemplated, Article VII, subdivision (J)(3) provides that administrative remedy available to the supervisor. It provides for notice and reasons for dismissal to be given to the supervisor and an opportunity to appeal and answer the charges. A committee to hear the appeal will be designated by the Chancellor and the party may be represented by a person of his choice. Witnesses may be called by both sides, cross-examination and introduction of evidence is permitted. A complete record of the proceeding is kept and made available to the supervisor. The committee shall make a recommendation after review to the Chancellor. The Chancellor shall within the prescribed time limit make the final decision for the City Board.

Claim (3) - improper and deliterious material is being placed in plaintiff's personnel file".

An official supervisor's file in a school must be maintained in accordance with Article VI, Subdivision (j) of the CSA contract. If improper entrees are made in this file which violate the terms of the contract, as plaintiff contends is occurring in this case, the supervisor may file a grievance under Article X of the CSA contract alleging that there has been a violation, misinterpretation or inequitable application of the contract. Article X provides for the progression of a grievance of a principal from first to second level to arbitration. At the first level of the grievance procedure an informal approach to resolve the matter is attempted (Article X, subd. B). At the second level - principal, a grievance may be filed with the Chancellor who, after specific procedures are followed, will render a decision (Article X, subd. B). If the grievance is not resolved at the second level, it may be submitted to arbitration (Article x, subd. C).*

* Article X, subdivision C - Arbitration provides for an extensive arbitration procedure to resolve disputes. See complete arbitration procedures (108-112).

It is apparent from the foregoing analysis that plaintiff has been provided with a speedy and adequate administrative remedy to deal with and possibly resolve each and every alleged general and specific claim of harassment, non-cooperation and impropriety which may exist or which may be in the process of development. Moreover, these administrative remedies are specifically structured to deal with the type of administrative and pedagogical irritants plaintiff nas complained of.

(3)

If plaintiff is not satisfied with the results of the contractual procedures he may then commence a proceeding before the Commissioner of Education pursuant to Section 310 of the New York State Education Law.

A brief discussion of the administrative procedures established by Section 310 of the Education Law and the regulations governing appeals to the Commissioner, 8 N.Y. Code of Rules and Regulations §275 et seq. is appropriate at this time.

The District Court summarily dismissed the administrative remedies afforded by Section 310 as

being inadequate under this Court's holding in Plano v. Baker, supra (147). There are, however, significant differences between the facts presented in Plano and the case at bar. In Plano, the plaintiff had been dismissed from his position as a teacher for assigning his class a homework assignment dealing with their attitudes toward premarital sex. In Plano, the dismissed teacher was afforded no hearing or other attributes of procedural due process prior to his dismissal. The fact that Mr. Plano had been dismissed from his position is a critical distinction between that case and the case at bar. For if the grounds for Plano's dismissal were, in fact, constitutionally impermissible, then he would have had a right to a due process hearing prior to dismissal, despite the fact that he was a non-tenured employee. Board of Regents v. Roth, 408 U.S. 564 (1972). Unlike Plano, Mr. Gonzalez had neither been dismissed, suspended, nor charged with inefficient service. Under these circumstances, plaintiff is not entitled to a full due process hearing to air his grievances.

In view of plaintiff's charges of official harassment and non-cooperation in the performance of his duties, the appeal procedures set forth in Section 310 of the Education Law are quite adequate.

Furthermore, in Plano, supra, the most telling factor in the Court's determination that the procedures created by Section 310 were inadequate was the fact that a procedure designed to resolve factual issues was not provided at any step of the process:

> "As the district court repeatedly emphasized, the case in its present posture presents a dispute which is largely factual. Yet, nowhere in the administrative process which the district court required appellant to exhaust was there a procedure designed to resolve factual issues. The Board did not conduct a fact-finding hearing, and the regulations governing appeals to the Commissioner, 8 N.Y. Code of Rules and Regulations §276.2 make oral argument discretionary and expressly prohibit the taking of testimony." 504 F 2d at 598 (emphasis added).

Here, however, as discussed earlier, the special complaint provisions of the CSA contract expressly provide for hearing and fact finding. Article XI, subd. D, E and F (113-115).

In addition, Article VII, subd. (J) of the "CSA Agreement", Summons, Discharge, or Review, provides for a full factual hearing with written charges, witnesses, cross-examination, introduction of evidence, and a transcript of the proceedings (83-86).

Moreover, this Court, in upholding the dismissal of former Superintendnet Luis Fuentes' complaint, in a closely related case, implicitly upheld the sufficiency of an appeal to the Commissioner of Education pursuant to Section 310. Fuentes v. Roher, 519 F 2d 379, 389-390.*

The regulations governing appeals and other proceedings before the Commissioner of Education, 8 N.Y. Code of Rules and Regulations §275 et seq. provide for a verified petition (§275.10), reply (§275.14)

* Although plaintiff will attempt to distinguish Fuentes, supra from his case on the ground that Fuentes' employment contract gave him a full trial-type hearing, the fact remains that Fuentes had been removed from his office and charged with 41 counts of misconduct. Here, the plaintiff has not been terminated, suspended, charged or otherwise denied his employment as Principal of J.H.S. 60M. Under these circumstances, plaintiff is entitled to less procedural safeguards than was Mr. Fuentes.

affidavits (§275.3) representation by an attorney (275.15) legal briefs (276.4) and oral argument (276.2). Therefore, plaintiff would have ample opportunity to fully present his complaints against the defendants before the highest ranking educational official in the State of New York. In view of the nature of the actions complained of, and the resulting harm allegedly suffered by the plaintiff, these procedures fully comport with plaintiff's right to due process of law.

We must, moreover, be mindful of this Court's caveat in Plano v. Baker, supra, at 599, where it was declared that "a boilerplate claim for damages will not automatically render the administrative remedy inadequate."

(4)

The District Court's reliance upon Alexander v. Gardner-Denver Company, 415 U.S. 36 (1974) for the proposition that contractually created administrative remedies need not be exhausted is misplaced. Alexander was a case brought under Title VII, 42 U.S.C. §2000(e) et seq. which is not the

jurisdictional predicate for the case at bar.* Alexander did not involve the doctrine of exhaustion of administrative remedies but the doctrines of election of remedies and estoppel. Alexander held that an employee who has been discharged and who first pursues his remedies in arbitration under a collective bargaining agreement is not, thereby, precluded from later pursuing his statutory rights under Title VII to a trial de novo of his claim that his dismissal was racially motivated.

Defendants assert that these cases are not relevant to the case at bar in that (1) defendants are not contending in the case at bar that plaintiff is or should forever be precluded from federal court but instead defendants simply argue that plaintiff must first exhaust his administrative remedies before seeking a judicial resolution; (2) the plaintiff has

* In Johnson v. Railway Express Agency, 421 U.S. 452, 44 L Ed 2d 295, 302 (1975), the Supreme Court recently held that the remedies under Title VII and 42 U.S.C. §1981, "although related, and although directed to most of the same ends, are separate, distinct, and independent." (emphasis supplied).

other administrative and/or contractual remedies other than arbitration or grievance - the contract provides for a "special complaint" procedure in Article XI which is quite apart from the arbitration and grievance remedy found in Article X and which is peculiarly adopted to deal with plaintiff's conspiracy and harassment claims; also section 310 of the Education Law provides an additional administrative remedy; (3) the claims raised by plaintiff in his complaint are such that should be resolved by the remedies available in the contract and/or section 310 of the Education Law.

Controlling on the issue of exhaustion of contractually created remedies is Fuentes v. Roher, supra. In Fuentes, supra, this Court held that the plaintiff was required to exhaust his administrative remedies prior to entering federal court, this, despite the fact that Fuentes had been removed from his position as Superintendent.* The remedies available

* Fuentes, likewise, had alleged that the defendants' actions were racially motivated and that the defendants had violated his First and Fourteenth Amendment rights Fuentes had proceeded pursuant to 42 U.S.C. 1983 and had sought substantial damages.

to Fuentes, although tracking the statutory language found in Section 2590-j-7 of the State Education Law were, in fact, contractually created remedies. Thus, it would appear that as long as the administrative remedies are adequate, it matters not that they are created by statute, by-law, or contract.

The District Court recognized that Fuentes involved contractually created remedies but attempted to distinguish it from this case by noting that in Fuentes, "the contract in question specifically embodied the very due process provisions provided by the State Education Law." (149). This would appear to be a distinction without a difference. For Fuentes, as a supervisory personnel, was not entitled, under New York Law, to the procedural safeguards afforded tenured teachers pursuant to Section 2590-j-7 of the Education Law. The only reason Fuentes had those protections was that they were guaranteed to him by his employment contract with the Community School Board. It was the contract that created Fuentes' administrative remedies and it was those remedies that this Court ordered Fuentes to exhaust.

Similarly, the plaintiff herein has a panoply of very substantial administrative remedies guaranteed to him under the "CSA contract". In addition, and in conjunction with such administrative remedies, the plaintiff has a right to an administrative appeal to the Commissioner of Education, N.Y. Education Law §310.

One further point should be emphasized. New York State's Civil Serivce Law, Sections 200 et seq. (commonly referred to as the Taylor Law) specifically requires public employers and employees to negotiate and enter into collective bargaining agreements. This is the declared public policy of the State. McKinney's N.Y. Civil Service Law §200. The establishment of procedures for the resolution of grievances and disputes is one of the most important policy considerations contained in the Taylor Law. See Civil Service Law §200; O'Keefe v. Helsby, 76 Misc. 2d 934, 351 N.Y.S. 2d 798; Currie v. Bixby, 40 A.D. 2d 341, 340 N.Y.S. 2d 73; Board of Education v. Great Neck Teachers Ass'n., 332 N.Y.S. 2d 326. It was pursuant to this legislative

mandate and the public policy of the State of New York that the "CSA contract" was negotiated and entered into.

Defendants submit that the administrative procedures and remedies contained in the "CSA contract" and discussed earlier in this point reflect as much the legislative intent of the State of New York as does the procedures contained in Section 2590-j-7 of the Education Law. Therefore, it is totally immaterial whether the contractual remedy at issue incorporates statutory language, as in Fuentes, or whether that remedy has been created as a result of express agreement between the public employer and employee, as in this case. There is no compelling reason to treat administrative remedies created by statute any differently than administrative remedies created by collective bargaining agreements pursuant to statutory mandate and authority. In fact, federal policy in this country encourages and favors collective bargaining, including grievance resolution, as the foremost means of maintaining good labor relations. United States

Steelworkers of America v. Warrior and Gulf Navigation Co., 363 U.S. 574, 581 (1960); United States Steel Workers of America v. American Mfg. Co., 363 U.S. 564 (1960); United States Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

## POINT II

PLAINTIFF HAS FAILED TO DEMONSTRATE THAT THE PRIVATE ACTIONS OF THE UFT DEFENDANTS WERE SO CLOTHED WITH GOVERNMENTAL AUTHORITY SO AS TO BE CONSIDERED STATE ACTION.

The District Court pointed out in its decision that in paragraph 31 of the complaint the plaintiff has set forth some fourteen fairly detailed incidents to support his claim that the defendants have been engaged in a conspiracy and policy of harassment and non-cooperation (143). There are three subdivisions of paragraph 31 of the complaint in which the plaintiff alleges specific acts of "misconduct" on the part of the UFT defendants. These three paragraphs, 31(k)(l) and (n), form the basis of the specific claims of misconduct on the part of the UFT defendants in this case:

> 31(k) Defendants Carosella, Green and, upon information and belief, defendants Mersereau, Lurie and defendant members of the Community Board, defendants Shanker, Levine, Fesko and defendant U.F.T., instigated and were responsible for Community School Board election campaign activity by

and with school personnel, during school hours and on the premises of J.H.S. 60M on January 29, 1975, in violation of the specific directives of the Chancellor of the Board of Education with respect to such activity. The defendants by this activity undermined the authority of the plaintiff in the administration of his scool and prevented the proper conduct of its affairs;

31(l) Defendant Braverman, and upon information and belief, defendant Lurie, defendant members of the Community Board, defendants Shanker, Levine, Fesko, Green, Carosella and defendant U.F.T., instigated and were responsible for the appearance of defendant Braverman at a meeting of a Human Relations course held for District One personnel on February 26, 1975, at which defendant Braverman spoke derogatorily of the plaintiff's principalship undermining thereby the professional authority and reputation of plaintiff and impairing his ability to act as a principal;

31 (n) Defendant Acting Superintendent Lurie has sought and obtained from defendant Spivack, Payroll Secretary of J.H.S. 60M, personal information about plaintiff, taken improperly and without authority from the personal files of plaintiff, located in the principal's office at J.H.S. 60M. In so doing, defendant Lurie has apparently acted without proper authority and has encouraged disloyalty to plaintiff Gonzalez among the personnel of the school and Community District One and has imparied the authority of plaintiff in conducting the affairs of the school.

Since plaintiff's federal claim is predicated upon an alleged violation of 42 U.S.C. §1983, the threshold question that must be answered is whether the statute reaches the conduct complained of on the part of the UFT members, officials and the union itself.

The scope of a §1983 action was analyzed by the Supreme Court in District of Columbia v. Carter, 409 U.S. 418, 34 L.Ed 2d 613 (1973) wherein the Court declared:

> "Like the Amendment upon which it is based, §1983 is of only limited scope. The statute deals only with those deprivations of rights that are accomplished under the color of the law of any State or Territory. It does not reach purely private conduct * * *." 34 L.Ed 2d 620.

There is no dispute that labor unions are private entities. And although unions have been subjected to governmental regulation and have been granted various powers by governmental agencies, such governmental participation in some of the affairs of unions does not consequently make every union activity so imbued with governmental action that it can be subjected to constitutional restraints. See Moose

Lodge No. 107 v. Irvis, 407 U.S. 163 (1972); Driscoll v. International Union of Operating Engineers, 484 F 2d 682 (7th Cir., 1973), cert. den. 415 U.S. 960 (1973); El Mundo Inc. v. Puerto Rican Newspaper Guild, 346 F Supp. 106 (D.C. Puerto Rico, 1972). To be regulable under constitutional standards through §1983, the activity of the private entity which a plaintiff is challenging must be supported by state action. Doe v. Bellin Memorial Hospital, 479 F 2d 756, 761 (7th Cir. 1973); Powe v. Miles, 407 F 2d 73, 81 (2nd Cir., 1968), that significantly fosters or encourages that activity. Moose Lodge No. 107, supra; Lucas v. Wisconsin Electric Power Co., 466 F 2d 638, 656 (7th Cir., 1972), cert. den. 409 U.S. 1114, (1973). In Powe v. Miles, 407 F 2d 73, 81, Judge Friendly stated:

> "The contention that New York's regulation of educational standards in private schools, colleges and universities *** makes their acts in curtailing protest and disciplining students the acts of the State is equally unpersuasive. It overlooks the essential point - that the state must be involved not simply with some activity of the institution alleged to have inflicted injury upon a plaintiff but with the activity that caused the injury. Putting the point

> another way, the state action, not the private action, must be the subject of complaint." (citations omitted).

In Driscoll v. International Union of Operating Engineers, supra, a §1983 action brought against a labor union, the Seventh Circuit upheld the dismissal of the complaint for want of jurisdiction, concluding that the plaintiff had failed to demonstrate that the essentially private action of the defendant labor union was so clothed with governmental authority as to be considered state or federal action governed by the United States Constitution.

Adickes v. S.H. Kress, and Co., 398 U.S. 144, 26 L Ed 2d 142, 90 S Ct 1598, [1970], was an action instituted by a white woman who was refused service in a Mississippi restaurant because she was accompanied by blacks. Upon leaving the restaurant she was arrested for vagrancy. In her complaint Ms. Adickes alleged that the refusal to serve her and her subsequent arrest by Hattiesburg police officers had been the result of a conspiracy between the defendant restaurant and the police to violate her right to equal protection. The Supreme Court reversed a grant of summary judgment dismissing plaintiff's §1983 action and established the

test for determining the validity of such a complaint.

> "The terms of §1983 make plain two elements that are necessary for recovery. First, the plaintiff must prove that the defendant has deprived him of a right secured by the 'Constitution and laws' of the United States. Second, the plaintiff must show that the defendant deprived him of this constitutional right 'under color of any statute, ordinance, regulation, custom or usage, of any State or Territory.' This second element requires that the plaintiff show that the defendant acted 'under color of law.'" Adickes v. S. H. Kress, supra. at 150, 26 L.Ed 2d at 150.

The Seventh Circuit Court of Appeals has held that:

> "The 'under color of' provision encompasses only such private conduct as is supported by state action. That support may take various forms, but it is quite clear that a private person does not act under color of state law unless he derives some 'aid, comfort or incentive', either real or apparent from the state. Absent such affirmative support, the statute is inapplicable to private conduct. We believe that affirmative support must be significant, measured either by its contribution to the effectiveness of defendant's conduct, or perhaps by its defiance of conflicting national policy, to bring the statute into play." Lucas v. Wisconsin Electric Power Co., 466 F2d 638, 654-656, [1972].

The Fifth Circuit is in accord stating in Parker v. Graves, 479 F2d 335, [1973], that:

> "[a]ction under this statute does not lie against a private person in his individual capacity, for it is only where a person acts to deprive another of his federal rights under color of state law that the statute provides authority for a federal claim; action against a state official is not authorized by statute where the official has acted in purely private individual capacity." (See also Sykes v. California C.C.A. 9th Cal., 497 F2d 197, [1974]; Weigand v. Afton View Apartments, C.C.A. 8th, 473 F2d 545 [1973]; Shirley v. State National Bank of Conn., C.C.A. 2nd, 493 F2d 739,[1974]).

The Supreme Court was again called upon to determine the question of a "private person's" liability under §1983 in Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 32 L.Ed 2d 627, 92 S.Ct. 1965, [1972]. While attempting to clarify the application of §1983 and the 'under color of state law' question the Court began at the extreme situation:

> "The Court has never held . . . that discrimination by an otherwise private entity would be violative of the Equal Protection Clause if the private entity receives any sort of benefit or service at all from the State, of if it is subject to state regulation in any degree whatever . . . [s]uch a holding would utterly emasculate the distinction between private as distinguished from state conduct set forth in The Civil Rights Cases . . . [W]here the impetus for the discrimination is private, the State must have 'significantly involved itself with invidious discriminations,'

> Reitman v. Mulkey, 387 U.S. 369, 380, 18 L Ed 2d 830, 838, 87 S.Ct. 1627, [1967], in order for the discriminatory action to fall within the ambit of the constitutional prohibition." (Moose Lodge No. 107 v. Irvis, supra., at 173, 32 L Ed 2d at 637).

More recently, the Supreme Court reiterated the Moose Lodge test by providing that: ". . . the inquiry must be whether there is a sufficiently close nexus between the state and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the state itself." Jackson v. Metropolitan Edison Co., ____ U.S. _____, 42 L Ed 2d 477, 484, 95 S.Ct. _____ [1974].

It is apparent from the foregoing authorities that in order for the plaintiff to state a claim against the private UFT defendants under 42 U.S.C. §1983, his allegations must show both that the defendants have deprived him of rights secured by the Constitution and laws of the United States, and that in so depriving the plaintiff of these rights, the private defendants have acted "under color of law."

Applying these requirements to the allegations contained in paragraphs 31 (k) (l) and (n) it is clear that plaintiff has failed to make the requisite showing of "state action" on the part of the non-governmental

defendants. The allegations set forth in paragraph 31 (K) charge that when defendants Carosella, Green, Shanker, Levine, Fesko and U.F.T. engaged in campaign activity during school hours on January 29, 1975 they had done so "in violation of the specific directives of the Chancellor of the Board of Education". If the U.F.T. defendants were acting in direct contravention of the directives of Chancellor Anker, the chief administrative officer of the City School System, it is difficult, if not impossible, to understand how the private U.F.T. defendants were acting "under color of state law" when they allegedly engaged in such campaign activity. Further, the only harm alleged to have been suffered by the plaintiff was that such activity "undermined the authority of the plaintiff in the administration of his school and prevented the proper conduct of its affairs." Defendants submit that this does not rise to the level of a deprivation of rights secured by the Constitution and laws of the United States, as required by §1983.

In paragraph 31 (l) of the complaint, plaintiff has alleged that defendant Braverman, a teacher in plaintiff's school and a member of the U.F.T. spoke "derogatorily of the plaintiff's principalship."

Again, there is no allegation that Braverman was acting under "color of state law", nor is there any allegation that what Braverman said was untrue. What has been the damage suffered by plaintiff as a result of Braverman's actions? The only harm alleged to have been suffered by the plaintiff is that his "professional authority" as well as his ability to "act as principal" have been undermined. This hardly gives rise to the deprivation of a right secured by the Constitution and the laws of the United States. Adickes, supra.; Shirley, supra., Sykes, supra.

Paragraph 31 (n) of the complaint alleges that in response to a request from District Superintendent defendant Lurie, defendant Spivack, the payroll secretary of J.H.S. 60M, and a member of the U.F.T., answered certain inquiries about the plaintiff. It must be noted that this is the only specific allegation of "misconduct" leveled against defendant Spivack. Although plaintiff's outrage appears to be directed toward Mr. Lurie, plaintiff seeks to hold defendant Spivack liable under §1983 based upon such a trivial incident.

Once again, plaintiff has failed to allege that the private defendant (Spivack) was acting under color of state law. In fact, plaintiff himself is not quite sure

if defendant Lurie did not have the right to look at plaintiff's personnel file for he merely alleges that, "[i]n so doing, defendant Lurie has apparently acted without proper authority." * * * The harm allegedly suffered by plaintiff as a result of this incident does not rise to the level of a constitutional deprivation.

The Court below was quite correct when it stated that any one of the allegations (in paragraph 31 of the complaint) may appear to present a trivial or an isolated occurrence (143). The Court erred, however, when it went on to conclude that "taken as a whole, plaintiff has clearly alleged a substantial interference with his civil rights. The allegations of "misconduct" on the part of the U.F.T. defendants taken as a whole, neither make out a case of conspiracy, nor a substantial interference with plaintiff's civil rights.

The test employed by the District Court, - that the complaint alleged that the U.F.T. defendants engaged in concerted, interrelated activity with the various governmental defendants, is clearly erroneous. See Adickes supra.; District of Columbia v. Carter, supra.; Moose Lodge No. 107, supra.; Shirley, supra.

Additionally, the United Federation of Teachers, an unincorporated association, is not a "person" within the meaning of the statute, 42 U.S.C. §1983. In Driscoll v. International Union of Operating Engineers, 484 F.2d 682, cert. denied 415 U.S. 960, the United States Court of Appeals for the Seventh Circuit held that the defendant labor union was beyond the reach of the statute. Accord, El Mundo, Inc. v. Puerto Rico Newspaper Guild, 346 F.Supp. 106. Indeed, a state bar association is not a person, Clark v. Washington, 366 F.2d 678 (9th Cir. 1966); nor are the Regents of the University of California, Sellers v. Regents of the University of California, 432 F.2d 493 (9th Cir. 1970) cert. denied 401 U.S. 981, and a municipal corporation is not a person within the meaning of 42 U.S.C. §1983, Monroe v. Pape, 365 U.S. 167 (1961); Moor v. County of Alameda, 411 U.S. 693 (1973); Kenosha v. Bruno, 412 U.S. 507 (1973).

## POINT III

THE COMPLAINT SHOULD HAVE BEEN DISMISSED AS TO DEFENDANTS CAROSELLA, BRAVERMAN, SPIVACK, SHANKER, LEVINE, FESKO, GREEN AND UNITED FEDERATION OF TEACHERS IN THAT IT FAILED TO ALLEGE ANY SPECIFIC FACTS WHICH COULD SUBSTANTIATE A CLAIM THAT SUCH DEFENDANTS VIOLATED PLAINTIFF'S CIVIL RIGHTS OR ENGAGED IN OR HAD KNOWLEDGE OF A CONSPIRACY TO VIOLATE PLAINTIFF'S CIVIL RIGHTS.

Plaintiff's allegations of specific acts of "misconduct" on the part of the named UFT defendants are contained in paragraphs 29 (I5), 31(k) (20), 31(l) (21) and 31 (n)(21) of the complaint.* The actions referred to in said paragraphs of the complaint form the basis of plaintiff's claim that these defendants were engaged in a conspiracy of harassment, interference and non-cooperation purportedly in violation of plaintiff's civil and constitutional rights. These allegations fall short of the mark. The actions complained of, even if true, fail to state a cause of action against the named UFT defendants.

* Paragraphs 31(k), (l) and (n) are also set forth in Point II, supra. herein.

As to plaintiff's conspiracy claim, there is a total failure to connect any of this apparently independent acts to the promotion of a conspiracy. Additionally, plaintiff has failed to connect any of these independent acts to one another. It is incumbent upon the plaintiff to allege concrete facts tending to establish the existence of a conspiracy of which the defendants had knowledge. Smith v. Bucci Detective Agency, 316 F Supp. 1284 (W.D. Pa. 1970). Moreover, assuming the truthfulness of the allegations, the plaintiff must show that the overt acts which defendnats engaged in were related to the promotion of a conspiracy. Powell v. Workman's Compensation Board of the State of New York, 327 F 2d 131, 137 (2nd Cir., 1964). No such showing has been made against the UFT defendants in this case.

As to the sufficiency of the allegations contained in paragraphs 31(k), (l) and (n) themselves, it is hard to imagine (a) how these actions, if true, could rise to the level of a federal claim, and (b) how these actions have deprived plaintiff of any

constitutionally protected rights. Further, these alleged actions on the part of the UFT defendants are classic examples of the kinds of administrative irritants and disagreements that should properly be referred to the grievance procedures established in the collective bargaining agreement or to the Commissioner of Education.

The allegation in regard to the UFT defendants in paragraph 31(k) of the complaint patently fails to raise a federal cause of action and fails to allege or demonstrate the deprivation of any cognizable constitutional right of the plaintiff. Moreover, if the defendants' actions did, as plaintiff alleges, violate the directives of the Chancellor, the plaintiff has presented precisely the type of administrative grievance envisioned by Article XI - Special Complaints of the "CSA Agreement". (112)

The allegation with respect to the defendants in paragraph 31(l) is insufficient, as a matter of law, to state a cause of action. The type of conduct on the part of defendant Braverman, if true, is nevertheless protected by the First Amendment. Plaintiff

has not alleged that the words spoken by Braverman were untrue, defamatory or slanderous. Again, plaintiff does not have a constitutionally protected right to be free from public criticism. Plaintiff, in addition, has failed to allege how his professional authority and reputation were undermined by Braverman's spoken words.

The allegation with respect to defendant Spivack, contained in paragraph 31(n) fails to allege any actionable conduct. The Acting Community Superintendent, as chief administrative officer of the Community School District, certainly has a right to request a principal's personnel file. The only claim made against defendant Spivack is that she complied with the Superintendent's request. There is no showing of wrongdoing on Spivack's part, nor has plaintiff pointed to any authority to support his contention that defendant Lurie acted without authority. Once again, plaintiff has failed to demonstrate the deprivation of any constitutional rights as a result of defendant Spivack's actions. It should further be noted that this is the sole specific allegation of "misconduct" made against defendant Spivack.

With respect to the allegation against defendant Levine contained in paragraph 29 of the complaint, plaintiff has woefully failed to allege facts sufficient to state a cause of action. Apparently, plaintiff would have a federal court hold defendant Levine liable for predicting that "should a UFT Board member majority be returned in the next election, it might become difficult for him to do his job as principal." Surely, this type of conduct does not rise to the level of a federal claim.

The allegations with respect to the United Federation of Teachers and the individual union defendants are insufficient to establish a cause of action against those defendants. Should this Court reject the legal arguments raised in Points I and II supra of appellants' brief, it should, nevertheless, dismiss the complaint as against the UFT defendants in the interests of justice.

## CONCLUSION

THE ORDER DENYING DEFENDANTS' MOTION TO DISMISS SHOULD BE REVERSED AND THE COMPLAINT SHOULD BE DISMISSED.

Dated: October 31, 1975

Respectfully submitted,

JAMES R. SANDNER
Attorney for UFT Appellants

JEFFREY S. KARP
Of Counsel

JACOB S. FELDMAN
Law Student
On the Brief

C 321—Affidavit of Service of Papers by Mail.
Affirmation of Service by Mail on Reverse Side.



UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

*Index No.* 75-7515

RAUL GONZALEZ,

Plaintiff-Appellee

*Plaintiff*

*against*

ALBERT SHANKER, et al.,

Defendants-Appellants

*Defendant*

*AFFIDAVIT OF SERVICE BY MAIL*

*STATE OF NEW YORK, COUNTY OF* NEW YORK *ss.:*

*The undersigned being duly sworn, deposes and says:*

*Deponent is not a party to the action, is over 18 years of age and resides at*
69 Country Club Lane, Pomona, N.Y. 10970

*That on* November 4, *19* 75 *deponent served the annexed*
UFT Appellants' Brief (2 copies)
*on* W. Bernard Richland, Corporation Counsel
*attorney(s) for* Municipal Defendants-Appellants
*in this action at* Municipal Building, N.Y., N.Y. 10007
*the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in a post office official depository under the exclusive care and custody of the United States Postal Service within the State of New York.*

*Sworn to before me*

November 4, 1975

Michelle Flores

MICHELLE FLORES
NOTARY PUBLIC, State of New York
No. 31-4602003
Qualified in New York County
Commission Expires March 30, 1977

Ronna Zoberman

The name signed must be printed beneath

Ronna Zoberman

C 321—Affirmation of Service of Papers by Mail.
Affidavit of Service By Mail on Reverse Side.



*Index No.*

*Plaintiff*

*against*

*Defendant*

**ATTORNEY'S AFFIRMATION OF SERVICE BY MAIL**

*STATE OF NEW YORK, COUNTY OF* ss.:

*The undersigned, attorney at law of the State of New York affirms: that deponent is attorney(s) of record for*

*That on* 19 *deponent served the annexed*

*on*
*attorney(s) for*
*in this action at*
*the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.*

*The undersigned affirms the foregoing statement to be true under the penalties of perjury.*

*Dated*

The name signed must be printed beneath

*Attorney at Law*

UNITED STATES COURT OF APPEALS
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UFT APPELLANTS' BRIEF (2 copies)

*on attorney(s) for* Layton & Sherman, Esqs.
plaintiff-appellee

*in this action at* 50 Rockefeller Plaza, New YOrk, N.Y. 10020

*the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care and custody of the United States Postal Service within the State of New York.*

*Sworn to before me*
November 4, 1975.

Michelle Flores

MICHELLE FLORES
NOTARY PUBLIC, State of New York
No. 31-4600003
Qualified in New York County
Commission Expires March 30, 1977

Ronna Zoberman

The name signed must be printed beneath

Ronna Zoberman

*Index No.*

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*against*

*Defendant*

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*Dated*

The name signed must be printed beneath

*Attorney at Law*